

FLORIDA'S PUBLIC RECORDS LAW

I. HISTORY

Florida's first Public Records Law was passed in 1909 and stated:

"That all State, county and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen." Chapter 5942, Acts 1909, Sec.1

Since 1909, Florida's Public Records Law has grown to 12 double column pages of the Florida Statutes and is codified in Chapter 119 of the Florida Statutes.

In 1992, Article 1, Section 24(a) of the Constitution of the State of Florida was adopted providing a constitutional guarantee to the openness of public records.

The Attorney General of the State of Florida has always been considered the State's guardian of the State's open government laws, including the Public Records Law; and annually publishes the "Government-In-The-Sunshine Manual" which contains over 450 pages of guidance and references to assist Florida's public officials in open government compliance, and citizens in open government access.

In the 1999 edition, the Attorney General quotes Justice William O. Douglas:

"Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic error."

II. SCOPE OF THE PUBLIC RECORDS LAW

- A. The law requires a public custodian to permit the inspection and copying of all public records under reasonable conditions and supervision. Sec. 119.07(1) F.S.
- B. The law applies to virtually every document made or received pursuant to law or ordinance, or in connection with the transaction of official business by any public agency. Sec. 119.011(1) Examples of these documents include:
 - 1. documents, papers, letters
 - 2. maps, books, tape recordings

- 3. films, data processing, e-mail
- 4. any material regardless of physical form, characteristics, or means of transmission
- C. The law applies to documents in the possession of the Council, the Council Committees, Council Members and Council Staff. Sec. 119.011(2) F.S.
- D. All documents are public records unless exempted by a Florida statute.
- E. The City Council is powerless to pass exemptions to the Florida Public Records Law.¹

III. THE CONSEQUENCES OF FAILING TO COMPLY WITH THE ACT

- A. A “knowing” violation of the law is a misdemeanor of the first degree punishable by imprisonment in jail for up to one (1) year. Sec. 119.10(2), F.S.
- B. All other violations are noncriminal punishable by fines not exceeding \$500.00. Sec. 119.10(1), F.S.
- C. Civil actions
 - 1. A violation of the Act will likely result in a civil action for injunctive or declaratory relief against the City and the individual Council Member wherein the claimant will seek to:
 - a. Declare the violation; Sec. 119.11, F.S.
 - b. Compel disclosure and copying; ² and
 - c. Award attorneys fees and costs in the event of violation. Sec. 119.12, F.S.

IV. NON-FINAL, AS WELL AS FINAL AND COMPLETED DOCUMENTS, ARE SUBJECT TO PUBLIC RECORDS DISCLOSURE

- A. Non-final documents which are subject to disclosure include those that are intended to perpetuate, communicate, or formalize knowledge, and include such things as:

1. Draft documents circulated for review, comment or information, even if considered a “working” or “preliminary” draft;³
 2. Drafts and notes intended as final evidence of knowledge;⁴
 3. Handwritten notes intended to communicate, memorialize, formulate, or preserve knowledge.
- B. It is generally accepted that the following documents are not public records subject to disclosure:
1. Personal notes used only to prepare other documentary records.⁵
 2. Notes given to a secretary or assistant for dictation.
 3. Preliminary notes made by a public custodian intended only for personal use in developing a document or presentation.
 4. Draft audit reports prepared by the Council Auditor as part of an internal audit of Council or inter city governmental related matters.
 5. Personal e-mails.

V. EXEMPTIONS

The Florida Legislature has seen fit to “exempt,” or protect from disclosure, many types of documents from the mandatory disclosure requirements of the public records law. This has been done to protect the privacy of some employees, to protect the integrity of the public bidding process and the collective bargaining process, and for other reasons deemed appropriate by the legislature. The following are guidelines that are applied to exemptions:

- A. All exemptions from mandatory disclosure are found only in the Florida Statutes.⁶
- B. Most exemptions from mandatory disclosure are found in Section 119.07(3), Florida Statutes but many other exemptions are scattered throughout the Florida Statutes. Common exemptions from mandatory disclosure include:
 1. EEO Complaints and Investigations Sec. 119.07(3)(p)
 2. Certain Collective Bargaining Material Sec. 447.605
 3. Medical Records Sec. 119.07(3)(v)
 4. Certain Attorney-Client Materials Sec. 119.07(3)(l)
 5. Certain Trade Secrets Sec. 119.07(3)(o)

- 6. Criminal Investigation Information Sec. 119.07(3)(b)
 - 7. Police Complaint Information Sec. 112.533
 - 8. Draft or nonfinal internal audit reports Sec. 119.07(3)(y).
 - 9. Whistleblower Complaints
 - 10. Commission on Ethics Complaints
- C. Unless there is certainty that an exemption from mandatory disclosure exists, a public official should contact an attorney in the Office of General Counsel for guidance.
 - D. Very few exemptions from mandatory disclosure apply to the City Council, Council Committees, or Council Members.
 - E. If an exemption from mandatory disclosure is claimed to prevent disclosure, the exemption must be identified to the requestor. Sec. 119.07(2)(a).
 - F. Some exemptions from mandatory disclosure are limited. That is, the exemption lasts only for a specific time.

VI. THE PROCESS FOR ACCESS AND COPYING

- A. A custodian of the record responsible for disclosure is any person who has it within his or her power to release the documents;⁷
- B. A citizen seeking disclosure need not show a “special interest” in order to have access to disclosure;⁸
- C. A citizen need not even identify his or her self in order to obtain disclosure;⁹ (There is nothing that prevents you from asking – you simply cannot make a disclosure conditional)
- D. Public records requests do not have to be in writing though you may request but not require a written request to explain why information was disclosed;
- E. A custodian may not deny a request for disclosure on the basis that the request is too broad. The custodian may, however, work with the requestor to identify precisely which documents are requested, and may charge appropriate statutorily prescribed fees for complying with the request.¹⁰

VII. TIMELINESS OF DISCLOSURES

- A. There are no specific time limitations, Most requests will present little, but some will present significant difficulty in production;
- B. **Reasonableness** is the standard. It is based upon common sense, and an objective opinion of how a judge or a prosecutor would view your conduct if you were charged with violating the law;
- C. There is no “automatic” delay that you can rely upon to protect you in disclosing documents;¹¹
- D. An unreasonable or excessive delay in production will likely lead to a civil action with the possibility of embarrassment, fines, penalties and assessment of attorneys’ fees and costs.¹²

VIII. FEES AND COSTS WHICH CAN BE CHARGES FOR PRODUCTION AND COPYING

- A. The standard cost of production and copying is 15 cents a page for single sided letter or legal sized copies and 20 cents a page for two sided copies. A charge of up to \$1.00 per record may be charged for certified records; Sec. 119.07(1)(a), F.S.;
- B. If a record, such as a plat or map for example, costs more than the standard amount to duplicate, the requestor may be charged the actual cost of duplication, without regard for overhead or labor costs;
- C. There are no administrative or personnel costs associated with simple public records requests;
- D. If the nature or volume of public records to be inspected or copied requires substantial use of clerical time or information technology, a reasonable service charge based upon actual costs may be charged. Sec. 119.07(1)(b), F.S.
- E. Deposits may be required before production, inspection and copying begins.¹³

IX. DESTRUCTION OF PUBLIC RECORDS

- A. Records can only be destroyed with the approval of the State of Florida's Division of Library and Information Services, Department of State (Division). Sec. 119.05, F.S.
- B. The City may obtain an orderly retention schedule from the Division.
http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm
<http://dlis.dos.state.fl.us/barm/forms/dispositiondoc.doc>

State of Florida

***GENERAL RECORDS SCHEDULE GS1-SL
FOR
STATE AND LOCAL GOVERNMENT AGENCIES***



NOVEMBER 1, 2006

Florida Department of State
State Library and Archives of Florida

Tallahassee, Florida 32399-0250

(850) 245-6750 Suncom 205-6750

Samples:

MINUTES: OFFICIAL MEETINGS

Item #32

This record series consists of the official record of official meetings, defined in s. 286.011(1), F.S. as "All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken..." The series may include verbatim transcripts or minutes summarizing issues addressed, actions taken, and decisions made. The series may also include agendas and background materials used as reference documentation for agenda items. This series does not include documentation of the logistics/planning of the meetings such as venue information or directions, travel itineraries, reservations and confirmations, etc., which are covered by Administrative Support Records. See also "CABINET AFFAIRS FILES," "MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS)," "MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS)," and "MINUTES: OTHER MEETINGS." ***These records may have archival value.***

RETENTION:

- a) Record copy. **Permanent. State agencies should contact the State Archives of Florida for archival review after 5 years. Other agencies should ensure appropriate preservation of records.**
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS)

Item #4

This record series consists of handwritten or typed notes and/or audio and/or video recordings of official meetings as defined in s. 286.011(1), F.S. See also "MINUTES: OFFICIAL MEETINGS" and "MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS)."

RETENTION:

- a) Record copy. 2 anniversary years after adoption of the official minutes or certification of transcript.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OFFICIAL MEETINGS (SUPPORTING DOCUMENTS)

Item #123

This record series consists of supporting documents for minutes and agendas generated by official meetings. These records provide information necessary for completing the minutes but do not document actual meeting proceedings. Records may include, but are not limited to, roll call sheets and sign-in sheets for speakers. See also "CABINET AFFAIRS FILES," "MINUTES: OFFICIAL MEETINGS (PRELIMINARY/AUDIO RECORDINGS/VIDEO RECORDINGS)," "MINUTES: OFFICIAL MEETINGS," and "MINUTES: OTHER MEETINGS."

RETENTION:

- a) Record copy. 2 anniversary years after adoption of the official minutes or certification of transcript.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

MINUTES: OTHER MEETINGS

Item #33

This record series consists of minutes and all supporting documentation from meetings which are not official meetings as defined in s. 286.011(1), F.S. ***These records may have archival value.***

RETENTION:

- a) Record copy. 1 anniversary year after date of meeting. ***State agencies must contact the State Archives of Florida for archival review before disposition of records. Other agencies should ensure appropriate preservation of records determined to have long-term historical value.***
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

ORDINANCES

Item #228

This record series consists of county or municipal ordinances. Section 166.041(1)(a), F.S., defines "ordinance" as "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law." See also "CHARTERS/AMENDMENTS/BYLAWS/CONSTITUTIONS," "ORDINANCES: SUPPORTING DOCUMENTS," "PROCLAMATIONS," and "RESOLUTIONS." ***These records may have archival value.***

RETENTION:

- a) Record copy. **Permanent. State agencies should contact the State Archives of Florida for archival review after 5 years. Other agencies should ensure appropriate preservation of records.**
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

ORDINANCES: SUPPORTING DOCUMENTS**Item #229**

This record series consists of documentation used in formulating ordinances including, but not limited to, correspondence, studies and reports, petitions, etc. See also "ORDINANCES." ***These records may have archival value.***

RETENTION:

- a) Record copy. 5 years after adoption of ordinance. ***State agencies must contact the State Archives of Florida for archival review before disposition of records. Other agencies should ensure appropriate preservation of records determined to have long-term historical value.***
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

A.		NO.				
B. RECORDS DISPOSITION DOCUMENT		PAGE OF PAGES				
1. AGENCY NAME and ADDRESS		2. AGENCY CONTACT (Name and Telephone Number)				
		() - Ext. .				
3. NOTICE OF INTENTION: The scheduled records listed in Item 5 are to be disposed of in the manner checked below (specify only one).						
<input type="checkbox"/> a. Destruction <input type="checkbox"/> b. Microfilming and Destruction <input type="checkbox"/> c. Other _____						
4. SUBMITTED BY: I hereby certify that the records to be disposed of are correctly represented below, that any audit requirements for the records have been fully justified, and that further retention is not required for any litigation pending or imminent.						
Signature		Name and Title				
		Date				
5. LIST OF RECORD SERIES						
a. Schedule No.	b. Item No.	c. Title	d. Retention	e. Inclusive Dates	f. Volume In Cubic Feet	g. Disposition Action and Date Completed After Authorization
6. DISPOSAL AUTHORIZATION: Disposal for the above listed records is authorized. Any deletions or modifications are indicated.				7. DISPOSAL CERTIFICATE: The above listed records have been disposed of in the manner and on the date shown in column g.		
				Signature		
				Date		
Custodian/Records Management Liaison Officer				Name and Title		
Date				Witness		

X. TALKING ABOUT PUBLIC RECORDS

Public officials are obliged to produce existing public records, they are not “obliged” to discuss or explain them. Nor are they obligated to create a new record in response to a public record request. (Though this will at times be easier for the public official) The extent of discussion of public records a public official wishes to do is purely a “political” or judgment decision.¹⁴

ACKNOWLEDGMENT

The Office of General Counsel wishes to express its gratitude to the Attorney General’s Office for its annual publication of the Government-In-The-Sunshine-Manual, which regularly updates public records law and practice.

Endnotes

¹ Tribune Company v. Cannella, 458 So.2d 1075 (Fla. 1984)

² Staton v. McMillan, 597 So.2d 940 (Fla. 1st DCA 1992)

³ Shevin v. Byron, Harless, 379 So.2d 633 (Fla. 1980)

⁴ Warden v. Bennett, 340 So.2d 977 (Fla.2d DCA 1976)

⁵ Shevin v. Byron, Harless, 379 So.2d 633 (Fla. 1980); State v. Kokal, 562 So.2d 324 (Fla.1990)

⁶ Tribune Company v. Cannella, 458 So.2d 1975 (Fla. 1984)

⁷ Sec. 119.021, F.S. Puls v. City of Port St. Lucie, 678 So.2d 514 (Fla. 4th DCA 1996)

⁸ State ex rel. Davis v. McMillan, 38 So.666 (Fla 1905)

⁹ Ops. Atty Gen. Fla. 92-38 (1992) and 91-76 (1991); Bevan v. Wanicka, 505 So.2d 1116 (Fla. 2d DCA 1987)

¹⁰ Lorei v. Smith, 464 So.2d 1330 (Fla. 2d DCA 1985)

¹¹ Tribune Company v. Cannella, *supra*.

¹² Town of Manalapan v. Rechler, 674 So.2d 789 (Fla. 4th DCA 1996)

¹³ Malone v. City of Satellite Beach, No. 94-10557-CA-D (Fla. 18th Cir. Ct. December 15, 1995, Per Curiam Affirmed at 687 So.2d 252 (Fla. 5th DCA 1997)

¹⁴ Op. Atty Gen. Fla. 92-38 (1992)